IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 1073 OF 2000

Vithal Bhaskar Thakur .. Petitioner

versus

Special Land Acquisition Officer

and another .. Respondents

...

Mr.C.G. Gavnekar for G.S. Hiranandani for the petitioner.

Mr.R.S. Khandeparkar AGP for respondents.

CORAM : D.G. KARNIK, J

DATED : 1st September 2006

ORAL JUDGEMENT:-

1. Heard learned counsel for the parties.

2. This Revision Application is directed against the order dated 13th July 1999 passed by the respondent no.1, the Special Land Acquisition Officer No.1, Uran, rejecting the petitioners' application dated 18th February 1999 for making of a reference

under section 18 of the Land Acquisition Act, 1894 (for short 'the Act)

3. At the outset, it may be stated that sub-section (3) has been added to section 18 of Act, in its application in the State of Maharashtra, by which any order made by Collector, on an application under section 18 of Act has been made subject to revision by the High Court as if the Collector were the Court subordinate to the High Court within the meaning of section 115 of the Code of Civil Procedure 1908. As such the impugned order which has been passed by respondent no.1 under section 18 of the Act is subject to revision by this Court.

4. The petitioner's land bearing Survey No.198, Hissa No.9, was acquired by the State of Maharashtra, the respondent no.2 herein, for the purpose of establishment of New Bombay Project and the award was published on 31st July 1998. The petitioner was not present and the award was made in his absence. Notice under section 12(2) of the Act was sent to the petitioner but was not served on him personally nor was it served on a male member of his family but was served on Himabai, the wife of the brother of the

petitioner on 21st December 1998. On 18th February 1999, the petitioner made an application under section 18 of the Act requesting the respondent no.1 to make a reference to the Court for enhancement of compensation. By order dated 13th July 1999, the respondent no.1 rejected the said application on the ground that the application was not made within 42 days of the service of the notice of the award under section 12(2) of the Act. That order is impugned in this Revision Application.

5. Learned counsel for the petitioner submitted that the service of notice under section 12(2) of the Act on Himabai was not in accordance with law. Service on the wife of the brother of the petitioner cannot be regarded as a valid service of notice under section 12(2) of the Act. Therefore, it must be held that notice u/s.12(2) had not been served on the petitioner. He further submitted at the most upon the service of the notice on the wife of the brother of the petitioner it can be said that petitioner had the constructive knowledge of the making of the award. In the absence of valid service of the notice under section 12(2) of the Act the period of limitation would not be 42 days but would be six months from the

date of the knowledge of the award.

6. In paragraph no.3 of the affidavit in reply, respondent has specifically stated that the notice under section 12(2) of the Act was served on Bhimabai A. Thakur i.e. wife of the brother of the petitioner. Section 12 of the Act does not prescribe any particular form of the notice. Section 45 of the Act prescribes the manner of service of any of the notices under the Act and reads as under:-

> **"45.** Service of notices :- (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed in the case of a notice under section 4, by the officer therein mentioned, and in the case of any other notice, by an order of the Collector or the Judge.
>
> (2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.
>
> (3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business or by fixing a copy thereof in some conspicuous place in the office of the

> officer aforesaid or of the Collector or in the court-house, and also in some conspicuous part of the land to be acquired :
>
> Provided that if the Collector or Judge shall so direct, a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and [registered under section 28 and 29 of the Indian Post Office Act, 1898 (6 of 1898)], and service of it may be proved by the production of, the addressee's receipt."

Sub-section (1) of Section 45 of the Act states that service of any notice under the Act shall be made by delivering or tendering a signed copy thereof. Sub-section (2) says that whenever it may be practicable, the service shall be made on the person named therein. Sub-section (3) says that when the person named cannot be found, the service may be made on any adult member of his family residing with him and if no such adult member can be found, the notice may be served by affixing a copy on the outer door of the house in which the person therein named ordinarily resides or carries on business or by affixing a copy thereof at some conspicuous place in the office of the Collector or in the court-house as the case may be and also in some conspicuous part of the land to be acquired. Proviso to sub-section (3) of section 45

states that the Collector of a Judge may direct that the notice may be sent by post in a letter addressed to the person named therein at his last known residence, address, or place of business, by post is to be made by a registered post. Bare perusal of section 45 would show that a notice is required to be served, wherever practicable, on the person to whom the notice is issued. When the person is not found, the service may be made on any adult male member of his family residing with him. The service cannot be made on a female member whether adult or minor, of the family. In the present case, admittedly the notice was not served on the petitioner nor was it served on any adult member in his family but was served on the wife of his brother. Even assuming that the brother was residing with the petitioner and a member of the family the notice was not served on a male member of the family residing with the petitioner. The respondent no.1 treated this service to be a proper service and therefore, did not follow any other mode of service prescribed under sub-section (3) viz. service by affixing or by registered post. In view of this, it must be held that the notice under section 12(2) of the Act was not validly served on the petitioner. At the most, as conceded by the learned

counsel for the petitioner, it can be held that service of a notice on the wife of the petitioner would amount to constructive knowledge of the making of the award to the petitioner.

7. The next question that is required to be considered is what is the period within which an application u/s.18 of the Act is required to be made when a notice under section 12(2) of the Act is not served on the person whose land is acquired. Section of the Act reads as follows :

> Section 18 :- Reference to Court -
>
> (1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.
>
> (2) The application shall state the grounds on which objection to the award is taken :
>
> Provided that every such application shall be made, -
>
> (a) If the person making it was present

> or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
>
> (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

Proviso of sub-section (2) of section 18 prescribes the period within which an application for making of a reference is required to be made. It contemplates three situations, for which period of limitation has been provided for making of an application for a reference. Firstly, if the person making an application was present or represented before the Collector at the time when he made the award, the application must be filed within six weeks from the date of the Collector's award (see clause (a) of the proviso). The second and third situation are covered by clause (b) of the proviso to section 18(2) of the Act. The second situation is where a notice is received by the applicant under section 12(2) of the Act. In such a case, period of limitation prescribed is six weeks from the date of the receipt of the notice. The third situation is where neither the person concerned was present when the award was made

nor a notice under section 12(2) has been served on him. In the third case an application is required to be made within six months from the date of the Collector's award. In the present case, admittedly, the petitioner was not present before the respondent no.1 when he made the award. I have already held that the notice u/s.12(2) was not properly served on the petitioner u/s.12(2) of the Act. The case is therefore not covered by first two situations contemplated by the proviso to section 18(2) of the Act but would fall under the third category and the period of limitation would be six months from the date of the Collector's award.

8. Learned AGP submitted that in the present case, the award was made on made on 31st July 1988 and the application for reference was made on 18th February 1999 i.e. after the expiry of the period of six months from the date of making of the award. He therefore submitted that even assuming that the case was covered by the third category, the application for reference was made after the expiry of six months and was therefore not maintainable and was properly rejected by respondent no.1. Per Contra, learned counsel for the petitioner submitted that the words "date of the award"

appearing in clause (b) of the proviso to section 18(2) must be construed as "the date of the knowledge - actual or constructive - of the award." In support, the learned counsel referred to and relied upon the decision of the Supreme Court in Raja Harish Chandra Raj Singh Vs. The Deputy Land Acquisition Officer & Anr. reported in AIR 1961 SC 1500.

9. In Raja Harish Chandra Vs. The Dy.Land Acquisition Officer & Anr. (Supra) the award was made on 25th March 1951, but no notice under section 12 of he Act was given to the claimant. It was only on 12th January 1953 that the claimant came to know about the making of the award whereafter he filed an application requesting the Collector to make a reference under section 18 of the Act on 24th February 1953. The High Court held that the application was made after six months from the date of the award and was beyond time. Reversing the decision the Supreme Court held

> "Therefore, if the award made by the Collector is in law no more than an offer made on behalf of the Government to the owner of the property then the making of the award as properly understood must involve the communication of the offer to the party concerned. That is the normal

> requirement under the contract law and its applicability to cases of award made under the Act cannot be reasonably excluded. Thus considered the date of the award cannot be determined solely be reference to the time when the award is signed by the Collector or delivered by him in his office; it must involve the consideration of the question as to when it was known to the party concerned either actually or constructively. If that be the true position then the literal and mechanical construction of the words "the date of the award" occurring in the relevant section would not be appropriate."

Thereafter in paragraph no.6 of its decision, the Supreme Court further observed :

> "Thus considered the making of the award cannot consist merely in the physical act of writing the award or signing it or even filing it in the office of the Collector it must involve the communication of the said award to the party concerned either actually or constructively. If the award is pronounced in the presence of the party whose rights are affected by it it can be said to be made when pronounced. If the date for the pronouncement of the award is communicated to the party and it is accordingly pronounced on the date previously announced the award is said to be communicated to the said party even if the said party is not actually present on the date of its pronouncement. Similarly if without notice of the date of its pronouncement an award is pronounced and a party is not present the award can be said to be made when it is communicated to the party later. The knowledge of the party

> affected by the award, either actual or constructive, being an essential requirement of fairway and natural justice the expression "the date of the award" used in the proviso must mean the date when the award is either communicated to the party or is known by him either actually or constructively. In our opinion, therefore, it would be unreasonable to construe the words "from the date of the Collector’s award" used in the proviso to s.18 in a literal or mechanical way"

10. In Parsottambhai Maganbhai Patel & ors. Vs. State of Gujarat reported in 2005(4) Mh.L.J. 1171, the Supreme Court has reiterated the law laid down in Raja Harish Chandan Vs. The Dy. Land Acquisition Officer (Supra). In view of the aforesaid decisions of the Supreme Court it is clear that the words "date of the award" appearing in clause (d) of the proviso to section 18 would have to be interpreted as the date of the knowledge of the award, actual or constructive. Mere making of the award and even publication of the award by the Collector in his office would not be regarded as starting point of limitation for calculating the period of limitation for six months for making of an application for reference. The starting point for counting the period of limitation for making of an application for reference u/s.18 of the Act, in a case where no notice under section 12(2) is issued and where the person is not present when the

award is made, would be the date of the knowledge - actual or constructive, of the making of the award by the Collector.

11. So construed in the present case, as conceded by learned counsel for the petitioner, the petitioner had the constructive knowledge of the award when the notice u/s.12 was served on the wife of the brother of the petitioner i.e. 21st December 1998. The application for reference could therefore be made within six months from 21st December 1998. The application made on 18th February 1999 was within six months of the knowledge of the award and was therefore within time. Respondent no.1, therefore, erred in law in rejecting the application u/s.18 on the ground that it was barred by limitation.

12. For these reasons, the petition is allowed. Impugned order is set aside and respondents are directed to make a reference to the appropriate District Court in accordance with section 18 of the Act. The respondents shall pay costs of this application to the petitioner which are quantified at Rs.2,000/-.

13. At this stage, learned counsel for the petitioner states that the papers of the reference were returned to the petitioner on passing of an order dated 13th July 1999. The petitioner is free to re-submit the said papers to the respondents who shall accept them when submitted and shall proceed to make the reference.

D.G. KARNIK, J